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EXECUTIVE FEDERALISM IN CANADA

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Federalism has been a fact of Canadian life since 1867 and there is little chance of it disappearing from Canada today. Throughout the past 120 years, the various federal and provincial governments have had to accept and accomodate themselves to the realities of federalism. We are constrained in much the same way today, although differences have evolved; thus, federalism has been and continues to be a dynamic force in this country. Therefore, the manner in which governments have chosen to coexist within the Canadian political structure has, of necessity, changed. The result is that, at present, the nature of federalism in Canada bears little resemblence to that which took root in 1867.

Today, the problems associated with governing a nation of immense diversity are subject to a process termed "executive federalism."(1) That is, the system of negotiation which is common between the executives of the federal and provincial governments. This negotiation usually takes the form of federal-provincial conferences during which the officials in attendance discuss many topics which potentially affect the interests of the different jurisdictions. "Few, if any, issues which are discussed in Canada today do not in some way impinge on federal-provincial relations."(2)

Such contact and coordination between the executives of Canada has become increasingly necessary over the years for a number of reasons. At Confederation, the powers of each level of government were delineated in what appeared to be a very precise

fashion. However, there emerged a growing number of areas in which action by one government affected the policies, and perhaps even the well-being, of other governments. In fact, these areas of mutual concern have increased so significantly that, today, it is almost impossible to conceive of any sphere of life which is subject to the legislation of only one level of government. "[The] concept of federalism seeks to solve problems arising from the federal distribution of powers by utilizing the combined authority of two or more jurisdictions, each of which by itself is impotent to resolve the difficulty."(3) This trend started very soon after Confederation and negotiation to try and resolve the resultant difficulties soon followed (the massive expansion of conflict did not occur until relatively recently). After World War II, there was a public demand for the federal government to involve itself in areas, such as pensions, which were, strictly speaking, the responsibilities of the provinces. Even so, the central government did encroach into these areas using primarily the "conditional grant." These grants were designed to provide funds to the provinces on the condition that their programs met federal standards. This reward system, which was especially prominent in the 1960s, came to be known as cooperative federalism. Within this model, "[h]armonious and productive interaction is facilitated because...program specialists share a body of knowledge and skills and possess a common set of professional attitudes and values.... [S]pecialists are permitted to exercise a large measure of autonomy...."(4)

This system of "cooperation" enabled some extremely important legislation, such as the Canada Pension Plan, unemployment insurance, and the Canada Health Act, to be passed, but this type of relationship could only exist as long as the provinces felt comfortable being subordinate to Ottawa. Such a situation could not exist indefinitely because "Canada's ten provinces are vigorous, activist units, jealous of their powers and anxious to use them.(5) By the 1970s, this strain of federalism had been replaced by executive federalism which allowed and, indeed, promoted a stronger bargaining position for the provinces. The change was not a dramatic one, occurring over a very short time. Rather, it was a gradual process during which the provinces came to exert greater power and influence. This provinicialism was the result of a number of factors, but was especially "[s]purred by increasing fiscal and bureaucratic strength, by their control of natural resources, by conflicting economic interests and by a sense that federal policies had been ineffective or unfair to their province...."(6)

As the provinces gained in political stature and acquired ever greater resources with which to affect federal-provincial negotiations, they began to assert that they were in the better position to address regional concerns. The belief was, and to a great extent still is, that the federal government either did not understand or chose to ignore the diversities present in Canada; Ottawa focused on the heartland of central Canada. "...the federal government is on almost every issue determined by the interests...of Central Canada...."(7) One of the major

contributing factors to this perception is the failure of Parliament and the party system to effectively air the grievances of the outer regions. "Parliament, and such extra-parliamentary institutions as political parties, are not very effective in giving authoritative resolutions to conflicts between centrifugal and centripetal tendencies in Canadian federalism."(8) The Canadian parliamentary system has failed the various regions because of its rigidity. Within our system of government, we do not allow dissent within the governing parties to be voiced publicly and, as a result, those who disagree with proposed legislation have been effectively silenced. Very often, even if a government does make an attempt to account for the regions, they fail because they feel they must maintain party discipline. Any divergence is aired privately, in caucus, leaving Canadians with the impression that there is no dissent at all and, thereby, no understanding of regional diversity. The party system fails because it has tended to become regionalized itself; a party whose members are predominantly from one region cannot realistically claim to represent or even understand the needs of the other regions. Had the political institutions of Canada given expression to the undeniable regional discord, there would have been much less reason for the growth of executive federalism and of provincial power. Nevertheless, provincial power has increased and because there were no visible means of voicing regional discord in existence, the provincial governments have taken this role upon themselves.

With the rise of provincial prestige it became imperative for some sort of negotiation to take place between the two levels of government. Not only was it inconceivable that the provinces would continue to allow uncontrolled federal interference within their jurisdictions, but the provinces wanted to reverse the flow of influence to a large extent. Instead of the central government influencing provincial policy through conditional grants, the provinces wished to press their claims as regional spokesmen and thereby affect federal policy. In such circumstances, it is easy to understand the need for negotiation, consultation, and coordination, which executive federalism is expected to facilitate. "Whether executive federalism works involves not whether governments agree or disagree, but whether if provides a forum...that is conducive...to negotiation, consultation, or simply an exchange of information."(9)

Executive federalism is an outgrowth of the cooperative federalism of the 1960s. During this period, negotiation took place, usually in the provincial sphere, between officials from similar departments with compatible attitudes and goals. This led to a great deal of understanding between the two levels of government over a number of specific programs. However, as the interaction of purpose and goals increased, the mode of collaboration became more politicized.(10) The governments involved felt that issues of great magnitude should not be left to the discretion of lesser officials.(11) The result was that ministers and top-level officials increasingly involved themselves in the process. These participants by definition are

less neutral than those below them; they usually have strong party ties and more loyalty to the power of their province than to the actual policies in question.(12)

Obviously, the success of these negotiations has a great deal to do with the relationship which exists between the participants. "[T]he formation and maintenance of networks (ie. trust ties) between the appointed officials of the two orders of government play a fundamental role in the workability of federal-provincial interaction."(13) If the rapport is good and the fundamental conflict minimal, a great deal can be accomplished. "[An] argument in support of collaboration is that it results in better decisions, ...because decisions are taken in the light of knowledge available to all governments."(14) On the other hand, these actors can also guarantee that nothing of consequence is achieved. "First ministers can virtually guarantee unworkable federal-provincial relations if, by design or inadvertance, the official charged with articulating the positions of the two orders of government do so on the basis of the clashing norms of different pro- fessions."(15) Thus, a discussion of the advantages and disadvantages of First Ministers' Conferences is in order.

The greatest advantage associated with this method of negotiation is its inherent potential for great achievements. Not only do the prime minister and premiers have all the authority they need to discuss any topic but they can proffer whatever information they deem necessary to facilitate agreement.

No other member of a government has the freedom of the leader to cooperate, negotiate, or compromise.(16) Also once an agreement has been achieved, a prime minister or premier can almost always guarantee the cooperation of his government.(17) Because these people usually command a majority of the seats in their respective houses, there is very little chance that any kind of serious dissention will threaten to overturn their decisions. Within their own spheres of influence, the First Ministers have a great deal of power; when all eleven of them unite in a common proposal, there is very little chance that they will be denied.

Problems exist, however. Along with great power goes great responsibility and, all too often, this responsibilty is neglected. This type of forum can fall too easily into disarray if power politics displaces cooperation and the pursuit of genuinely beneficial agreements. Deterioration is a constant danger within these conferences because there is no accountability involved.(18) Accountability infers that if the participants take unwarranted action or uphold positions for which they have no mandate, they will be forced to retreat. In other words, "those who govern with power delegated to them by the public should be subject to control and, where necessary make redress to, that same public.(19) This is not the case, however, for a few reasons. First, as the various legislative houses of the country are dominated and controlled by the executive, there is little chance that decisions of these conferences can be overturned. "To the extent that agreements are hammered out at federal-provincial conferences, they result in virtual <u>faits</u>

accomplis which tend to erode the legitimacy of both Parliament and the provincial legislatures."(20) The respective opposition parties may object very strongly but they do not have the practical political power necessary to make a difference. Also the party discipline of Canadian houses prevents any member of the government party from voting against a government position even if he strongly disagrees with it. The debate in Parliament and the legislatures too often resembles the use of a rubber stamp because the executive is afraid that serious debate will lead to a demand for revision and such a demand would jeopardize the agreement of other governments. "[Relatively little time is spent on the legislation that comes before Parliament as a result of federal-provincial agreements because...any major changes to such legislative arrangements might jeopardize the agreement and require a return to the conference table."(21) Secondly, even if there were a strong movement against a resolution presented by the government, those who attended the conference could easily shift the blame onto the representatives of other governments by saying that they were forced to compromise because of the unreasonable and unalterable positions of other participants.

Another problem associated with this type of conference is secrecy. In some instances, secrecy is necessary because the subject matter is highly confidential and premature release can have adverse effects on proposed policies. More often, than not, however, such secrecy is seen to be contrary to the principles of open and democratic government. As democrats, we believe that the public must be substantially informed about government

activities if they are to be reasonably capable of assessing the performance of their legislators. Also it is often believed that secret negotiations are in some way not completely legal. This problem of secrecy is less of a difficulty as a result of press coverage of conferences, at least at the level of the First Ministers. Because the press are so interested in what leaders do, there has been a demand for their meetings to be televised. This leads to new problems, though. In the presence of media, the leaders tend posture. They fear that their constituents will see collaboration and compromise as weakness by the public. The participants feel the need to be more obstinate about their governments' demands and less conciliatory with their colleagues who express different interests. In effect, there needs to be some degree of secrecy to ensure negotiation. "Accountability...is a serious concern, [but] [r]esponsible intergovernmental officials must also be concerned with such values as responsiveness and effectiveness."(22) It is often the case that constituents are happy with an agreement but would balk if they knew about the negotiation behind it.

There is also concern that this method of negotiation has tended to blur the jurisdictions of the different levels of government and, as a consequence, federal authority has been undermined.(23) As was mentioned above, the provinces are constantly interfering in what would have been,a few years ago, forbidden territory. As they stress their function as regional spokesmen, they give advice to the federal government on different issues. Unfortunately, this is often perceived by the

public as negotiation between the two governments. The provincial constituents come to believe that the advice offered must be accepted.(24) Canadians are finding it ever more difficult to determine which jurisdiction a question falls under and the main loser is the national government and its representatives. The outcome has been that provinces exercise influence in areas where they do not belong, much to the detriment of Parliament.(25) The reverse is not true; there is a fundamental imbalance in the negotiations conducted today because the federal government does not possess reciprocal influence over provincial policy. There is an "increased use of federal-provincial conferences as a forum for the expression of regional interests in matters substantially within the federal authority that affect the residents of each province or region but not necessarily the decisions of provincial governments.

This is not an exhaustive list of the problems associated with executive federalism but it is an important one. First Ministers' Conferences will not disappear in the near future, so there must be some attempt to redress these problems and others. A method by which the ad hoc nature of these conferences could be eradicated would do a great deal to eliminate some of the problems. For example, if a method of settling the agendas was proposed and a way was instituted to ensure that only items on the agenda were discussed, some of the problems over jurisdiction could be halted. Also if it became a requirement that transcripts of the discussions be kept, in order that they were released at some future date, the undemocratic secrecy could be

avoided to a degree. It is also imperative to ensure that the members participating in the conferences are held accountable for their actions to their respective constituencies, in some way, because the present system of virtual dictatorship is unacceptable in a democratic society.

NOTES

(1)This term was coined by Donald Smiley but has become established in the terminology of Canadian federalism and is now used extensively.

(2)Peter Meekison, "Federal-Provincial Relations," in Approaches to Canadian Politics, John Redekop, ed., (Scarborough: Prentice-Hall, 1983), p. 149.

(3)Edwin Black, Divided Loyalties, (Montreal: McGill-Queen's University Press, 1975), p. 43.

(4)Kenneth Kernaghan, "Intergovernmental administrative relations in Canada," in his Public administration in Canada, (Toronto: Methuen, 1983?), p. 157.

(5)Richard Simeon (I), Federal-Provincial Diplomacy, (Toronto: University of Toronto Press, 1972), p. 10.

(6)Richard Simeon (II), "Intergovernmental relations and the challenge to Canadian Federalism," in Canadian Public Administration, 23 (Spring 1980), p. 18.

(7)I. Bagramov, Canada at the Threshold of the Eighties, Department of External Affairs, English translation, 1984, p. 381.

(8)Seymour Wilson, "Federal-Provincial Relations and Federal-Policy Process," in Public Policy in Canada, Bruce Doern and Peter Aucoin, eds., (Toronto: The MacMillan Company of Canada, 1979), p. 100.

(9)Stefan Dupre, "Reflections on the Workability of Executive Federalism," in Intergovernmental Relations, Richard Simeon (Research Coordinator), (Toronto: University of Toronto Press, 1985), p. 1.

(10)Donald Smiley, Canada in Question, (Toronto: McGraw-Hill Ryerson, 1980), pp. 86-87.

(11)Garth Stevenson, "From Cooperative to Executive Federalism" in Politics: Canada, P.W. Fox and G. White, eds., (Toronto: McGraw-Hill Ryerson, 1987), p. 277.

(12)G. Stevenson, p. 278.

(13)Dupre, p. 22.

(14)G. Veilleux, "Intergovernmental Canada" in Canadian Public Administration 23 (Spring 1980), p. 50.

(15)Dupre, p. 24.

(16)See Dupre, p. 15.

(17) "Intergovernmental business in Canada is conducted by governments, of course, not legislatures. More specifically it is conducted by Cabinet members, notably by First Ministers. This works because a Cabinet in our parliamentary system can normally "deliver" legislative support on virtually any matter.... Interministerial conferences are thus an adjunct to executive power, a demonstration of where power actually resides...." Gordon Robertson, "The Role of the Interministerial Conference in The Decision-Making Process," in Confrontation and Collaboration, Richard Simeon, ed., (Toronto: The Institute of Public Administration of Canada, 1970), p. 80.

(18) "The process has many critics. First, many argue it is undemocratic. It reinforces the tendency toward executive dominance.... It further undermines Parliament and the legislatures.... [It] tightens government secrecy. It dilutes the accountability of governments to the public. Simeon (II), p. 23.

(19) Paul Brown, "Responsiveness versus accountability in collaborative federalism," in Canadian Public Administration 26 (Winter 1983), p. 633.

(20) Don Stevenson, "The Role of Intergovernmental Conferences in the Decision-Making Process," in Confrontation and Collaboration, Richard Simeon, ed., (Toronto: The Institute of Public Administration in Canada, 1970), p. 93.

(21) Cindy McKinley, The Federal-Provincial Conference, (Parliamentary Internship Paper, 1970), p. 11.

(22) Kernaghan, p. 165.

(23) See Veilleux, p. 50.

(24) See Robertson, pp. 82-83.

(25) See Simeon (II), p. 23.

(26) Robertson, p. 81.

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